

WORK FOR OTHERS AGREEMENT WITH NON-FEDERAL SPONSORS

WORK FOR OTHERS AGREEMENT NO. _____

BETWEEN

THE UNIVERSITY OF CHICAGO
AS OPERATOR OF ARGONNE NATIONAL LABORATORY
OPERATING UNDER PRIME CONTRACT NO. W-31-109-ENG-38
FOR THE
U. S. DEPARTMENT OF ENERGY

AND

(INSERT HERE THE NAME OF THE NON-FEDERAL SPONSOR)

The obligations of the UNIVERSITY OF CHICAGO, as Operator of ARGONNE NATIONAL LABORATORY shall apply to any successor in the interest of continuing the operation of ARGONNE NATIONAL LABORATORY.

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ARTICLE I. - PARTIES TO THE AGREEMENT

The UNIVERSITY OF CHICAGO as operator of ARGONNE NATIONAL LABORATORY operating under Prime Contract No. W-31-109-ENG-38 for the U. S. DEPARTMENT OF ENERGY, hereinafter referred to as the "Laboratory," has been requested by (*insert here the name of the non-Federal Sponsor*), hereinafter referred to as the "Sponsor," to perform the work on a best effort basis as set forth under Work For Other (WFO) Proposal No. _____, attached hereto as Appendix A. It is understood by the Parties that, except for the intellectual property provisions of this Agreement, the Laboratory is obligated to comply with the terms and conditions of its Agreement with the United States Government (hereinafter called the "Government") represented by the United States Department of Energy (hereinafter called the "Department" or "DOE") when providing goods, services, products, processes, materials, or information to the Sponsor under this Agreement.

ARTICLE II. - TERM OF THE AGREEMENT

The Laboratory estimated period of performance for completion of the Statement of Work is _____ months. The term of this Agreement shall be effective as of the date on which it is signed by the last of the Parties thereto.

ARTICLE III. - COSTS

- A. The Laboratory estimated cost for the work to be performed under this Agreement is \$_____.
- B. The Laboratory has no obligation to continue or complete performance of the work at a cost in excess of its estimated cost, including any subsequent amendment.

ARTICLE IV. - FUNDING AND PAYMENT

The Sponsor shall pay the Laboratory the following advance payment and monthly invoice payments:

- A. Advance Payment. The Sponsor shall advance the following amount at the time shown:

Amount Due

Date Due

\$_____.__

Upon execution of Agreement

Advance payment shall be recorded in the Laboratory's account until the last three (3) months of the Agreement term at which time it shall be liquidated by charging costs

incurred during that period to the advance payment account. Advance payment in excess of total costs incurred by the Laboratory under this Agreement shall be refunded to the Sponsor.

- B. Monthly Invoice Payments. Once each month during the Agreement term the Laboratory shall invoice the Sponsor for costs incurred in the previous month. Payment for such costs shall be due not later than thirty (30) days after the invoice date, except to the extent the invoice states that costs are being charged to the advance payment account as provided in Paragraph A above.
- C. Applicable Currency. All payments due the Laboratory under this Agreement, including cost estimates and obligations of funds, shall be in United States dollars (U.S.\$).

ARTICLE V. - SOURCE OF FUNDS

The Sponsor hereby warrants and represents that, the funding it brings to this Agreement does not include any federal funds, and there are no other agreements that have terms and conditions including intellectual property conflicting with this Agreement.

ARTICLE VI. - PROPERTY

Unless the Parties otherwise agree in writing, each piece of equipment having a value in excess of \$5,000.00 produced or acquired with funds provided by the Sponsor shall be disposed of as instructed by the Sponsor, and any and all costs associated with the disposal of such property shall be at the Sponsors expense. Any piece of equipment produced or acquired under \$5,000.00 shall become property of the Laboratory on behalf of the Government.

ARTICLE VII. - PUBLICATION MATTERS

The publishing Party shall provide the other Party a thirty (30) day period in which to review and comment on proposed publications prepared under this Agreement that disclose technical developments and/or research findings generated in the course of this Agreement. The publishing Party shall not publish or otherwise disclose Proprietary Information identified by the other Party, except as provided by law.

ARTICLE VIII. - LEGAL NOTICE

The Parties agree that the following legal notice shall be affixed to each report furnished to the Sponsor under this Agreement and to any report resulting from this Agreement which may be distributed by the Sponsor:

THIS MATERIAL WAS PREPARED AS AN ACCOUNT OF WORK SPONSORED BY **Insert Sponsor Name**. NEITHER THE AUTHORS, UNITED STATES GOVERNMENT NOR ANY AGENCY THEREOF, NOR THE UNIVERSITY OF CHICAGO, NOR ANY OF THEIR EMPLOYEES OR OFFICERS, MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR

ASSUMES ANY LEGAL LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, COMPLETENESS, OR USEFULNESS OF ANY INFORMATION, APPARATUS, PRODUCT, OR PROCESS DISCLOSED, OR REPRESENTS THAT ITS USE WOULD NOT INFRINGE PRIVATELY OWNED RIGHTS. REFERENCE HEREIN TO ANY SPECIFIC COMMERCIAL PRODUCT, PROCESS, OR SERVICE BY TRADE NAME, TRADEMARK, MANUFACTURER, OR OTHERWISE, DOES NOT NECESSARILY CONSTITUTE OR IMPLY ITS ENDORSEMENT, RECOMMENDATION, OR FAVORING BY THE UNITED STATES GOVERNMENT OR ANY AGENCY THEREOF. THE VIEW AND OPINIONS OF AUTHORS EXPRESSED HEREIN DO NOT NECESSARILY STATE OR REFLECT THOSE OF THE UNITED STATES GOVERNMENT OR ANY AGENCY THEREOF.

ARTICLE IX. - DISCLAIMER

THE GOVERNMENT AND THE LABORATORY MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS WORK FOR OTHERS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT; THAT THE GOODS, SERVICES, MATERIALS, PRODUCTS, PROCESSES, INFORMATION, OR DATA TO BE FURNISHED HEREUNDER WILL ACCOMPLISH INTENDED RESULTS OR ARE SAFE FOR ANY PURPOSE INCLUDING THE INTENDED PURPOSE; OR THAT ANY OF THE ABOVE WILL NOT INTERFERE WITH PRIVATELY OWNED RIGHTS OF OTHERS. NEITHER THE GOVERNMENT NOR THE LABORATORY SHALL BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ATTRIBUTED TO SUCH RESEARCH OR RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DELIVERED UNDER THIS WORK FOR OTHERS AGREEMENT.

ARTICLE X. - GENERAL INDEMNITY

The Sponsor agrees to indemnify and hold harmless the Government, the Department, the Laboratory, and persons acting on their behalf from all liability, including costs and expenses incurred, to any person, including the Sponsor, for injury to or death of persons or other living things or injury to or destruction of property arising out of the performance of the Agreement by the Government, the Department, the Laboratory, or persons acting on their behalf, or arising out of the use of the services performed, materials supplied, or information given hereunder by any person including the Sponsor, and not directly resulting from the fault or negligence of the Government, the Department, the Laboratory, or persons acting on their behalf.

ARTICLE XI. - PRODUCT LIABILITY INDEMNITY

Except for any liability resulting from any negligent acts or omissions of the Government or the Laboratory, the Sponsor agrees to indemnify the Government and the Laboratory for all damages, costs, and expenses, including attorney's fees, arising from personal injury or property

damage occurring as a result of the making, using, or selling of a product, process, or service by or on behalf of the Sponsor, its assignees, or licensees, which was derived from the work performed under this Work for Others Agreement. In respect to this Article, neither the Government nor the Laboratory shall be considered assignees or licensees of the Sponsor, as a result of reserved Government and Laboratory rights. The indemnity set forth in this paragraph shall apply only if the Sponsor shall have been informed as soon and as completely as practical by the Laboratory and/or the Government of the action alleging such claim and shall have been given an opportunity, to the maximum extent afforded by applicable laws, rules, or regulations, to participate in and control its defense, and the Laboratory and/or Government shall have provided all reasonably available information and reasonable assistance requested by the Sponsor. No settlement for which the Sponsor would be responsible shall be made without the Sponsor's consent unless required by final decree of a court of competent jurisdiction.

ARTICLE XII. - INTELLECTUAL PROPERTY INDEMNITY - LIMITED

The Sponsor shall indemnify the Government and the Laboratory and their officers, agents, and employees against liability, including costs, for infringement of any United States patent, copyright, or other intellectual property arising out of any acts required or directed by the Sponsor to be performed under this Agreement to the extent such acts are not already performed at the facility. Such indemnity shall not apply to a claimed infringement that is settled without the consent of the Sponsor unless required by a court of competent jurisdiction.

ARTICLE XIII. - NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

The Sponsor shall report to the Department and the Laboratory, promptly and in reasonable written detail, each claim of patent or copyright infringement based on the performance of this Agreement of which the Sponsor has knowledge. The Sponsor shall furnish to the Department and the Laboratory, when requested by the Department or the Laboratory, all evidence and information in the possession of the Sponsor pertaining to such claim.

ARTICLE XIV. - PATENT RIGHTS

(a) Definitions

- (1) "Sponsor" means the person or entity with which this agreement is made.
- (2) "Subject Invention" means any invention or discovery of the Facility Operator or, to the extent the Sponsor is performing any work under this agreement, of the Sponsor, conceived in the course of or under this agreement, or in the case of an invention previously conceived by the Sponsor, first actually reduced to practice in the course of or under this agreement. An invention conceived by the Facility Operator outside this agreement, but first actually reduced to practice in the course of or under this agreement, may also be considered a "Subject Invention" if

specifically identified as such in this agreement. "Subject Invention" includes any art, method, process, machine, manufacture, design or composition of matter, or any new and useful improvement thereof, or any variety of plants, whether patented or unpatented under the Patent Laws of the United States of America or any foreign country.

- (3) "Facility Operator" means the operating contractor which manages and operates the Government-owned, contractor-operated facility where the work under this agreement is to be performed.
- (4) "Patent Counsel" means the DOE Patent Counsel assisting the procuring activity.

(b) Invention Disclosures and Reports

- (1) The Sponsor shall furnish the Patent Counsel and the Facility Operator:
 - (i) A written report containing full and complete technical information concerning each of its Subject Inventions within six (6) months after conception or first actual reduction to practice whichever occurs first in the course of or under this agreement, but in any event prior to any on sale, public use, or public disclosure of such invention known to the Sponsor. The report shall identify the agreement and inventors and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains, a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention;
 - (ii) A final report on a DOE-approved form within three (3) months after completion of the agreement work, listing all Subject Inventions of its own and certifying that all Subject Inventions have been disclosed or that there were no such inventions.
- (2) The Sponsor agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to the agreement.
- (3) The Facility Operator shall report Subject Inventions it makes in accordance with the procedures set forth in the Prime Contract with DOE. In addition, the Facility Operator shall disclose to the Sponsor at the same time as disclosure to DOE any Subject Inventions under this agreement, by providing a written report in the format prescribed in paragraph (b)(1)(i) above.

(c) Allocation of Principal Rights

- (1) Assignment to the Government. The Sponsor and the Facility Operator agree to assign to the Government the entire right, title, and interest throughout the world in and to each Subject Invention, except to the extent that rights are retained by the Sponsor and/or Facility Operator under paragraph (c)(2) and (d) of this clause.
- (2) Greater Rights Determinations. The Sponsor, Facility Operator or their employee-inventors with authorization of the employer may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the procedure and criteria of 10 CFR 784.8. A request for a determination of whether the Sponsor, Facility Operator or the employee-inventor is entitled to retain such greater rights must be submitted to Patent Counsel (with notification by Patent Counsel to the Contracting Officer) at the time of the first disclosure of the invention pursuant to paragraph (b) of this clause, or not later than nine (9) months after conception or first actual reduction to practice, whichever occurs first, or such longer period as may be authorized by Patent Counsel (with notification by Patent Counsel to the Contracting Officer) for good cause shown in writing by the Sponsor or Facility Operator. The information to be submitted for a greater rights determination is specified in 10 CFR 784.9.

(d) Minimum Rights to the Sponsor or Facility Operator

The Sponsor reserves an irrevocable, nonexclusive, paid-up license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires the title. The license shall extend to the Sponsor's domestic subsidiaries and affiliates, if any, within the corporate structure of which the Sponsor is a part and shall include the right to grant sublicenses of the same scope to the extent the Sponsor was legally obligated to do so at the time the contract was awarded. The license shall be transferable only with approval of DOE except when transferred to the successor of that part of the Sponsor's business to which the invention pertains.

(e) Employee Agreements

Unless otherwise authorized in writing by the Contracting Officer, the Sponsor and the Facility Operator shall obtain patent agreements to effectuate the provisions of the Patent Rights clause from all persons who perform any part of the work under this contract except non-technical personnel, such as clerical employees and manual laborers.

(f) Atomic Energy

- (1) No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted by the Sponsor or Facility Operator or their employees with respect to any inventions or discovery made or conceived in the course of or under the contract.
- (2) Except as otherwise authorized in writing by the Contracting Officer, the Sponsor and the Facility Operator will obtain patent agreements to effectuate the provisions of paragraph (f)(1) of the clause from all persons who perform any part of the work under this contract, except non-technical personnel, such as clerical employees and manual laborers.

(g) Publication

In order that information concerning scientific or technical developments conceived or first actually reduced to practice in the course of or under the contract is not prematurely published so as to adversely affect patent interest of DOE, the Sponsor and the Facility Operator agree to submit to the Patent Counsel for patent review a copy of each paper sixty (60) days prior to its intended publication date. The Sponsor and the Facility Operator may publish such information after expiration of a sixty (60) day period following such submission or prior thereto if specifically approved by the Patent Counsel, unless the Sponsor and Facility Operator respectively, are informed (in writing within the sixty (60) day period) that in order to protect patentable subject matter, publication must further be delayed. In this event, publication shall be delayed up to one-hundred (100) days beyond the sixty (60) day period or such longer period as mutually agreed to.

(h) Limitation of Rights

Nothing contained in this Patent Rights article shall be deemed to give the Government any rights with respect to any invention other than a Subject Invention except as set forth in the Facilities License of paragraph (i).

(i) Facilities License

In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this agreement, the Sponsor and the Facility Operator agree to and do hereby grant to the Government an irrevocable, nonexclusive paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Sponsor or the Facility Operator as the case may be, which at any time through completion of this agreement are owned or controlled

by the Sponsor or the Facility Operator as the case may be and are incorporated in the facility as a result of this agreement to such an extent that the facility is not restored to the condition existing prior to the agreement (1) to practice or to have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

ARTICLE XV - RIGHTS IN TECHNICAL DATA - USE OF FACILITY

The terms of the Rights in Technical Data article of the Prime Contract W-31-109-ENG-38 between the University of Chicago and the United States Department of Energy for operation of Argonne National Laboratory shall apply to work performed under this agreement. Further, the Sponsor shall have unlimited rights to all technical data first produced in the performance of the work under this agreement. Unlimited rights means right to use, duplicate or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and permit others to do so.

ARTICLE XVI. - ASSIGNMENT

Neither this Agreement nor any interest therein or claim thereunder shall be assigned or transferred by either Party, except as authorized in writing by the other Party to this Agreement, provided, the Laboratory may transfer it to the Department, or its designee, with notice of such transfer to the Sponsor, and the Laboratory shall have no further responsibilities except for the confidentiality, use, and/or non-disclosure obligations of this Agreement.

ARTICLE XVII. - SIMILAR OR IDENTICAL SERVICES

The Government and/or Laboratory shall have the right to perform similar or identical services in the Statement of Work (SOW) for other Sponsors as long as the Sponsor's Proprietary Information is not utilized.

ARTICLE XVIII. - EXPORT CONTROL

Each Party is responsible for its own compliance with laws and regulations governing export control.

ARTICLE XIX. - TERMINATION

Performance of work under this Agreement may be terminated at any time by either Party, without liability, except as provided herein, upon giving a thirty (30) day written notice to the other Party. Such notice will be effective upon receipt of written notice by the other Party. In the event of termination, the Sponsor shall be responsible for the Laboratory's costs (including closeout costs), through the effective date of termination, but in no event shall the Sponsor's cost

responsibility exceed the total cost to the Sponsor as described in Article III, above.

It is agreed that any obligations of the Parties regarding Proprietary Information or other intellectual property will remain in effect, despite early termination of this Agreement.

ARTICLE XX - APPLICABLE LAW

The Parties shall attempt to jointly resolve all disagreements arising from this Agreement. If the Parties are unable to jointly resolve a disagreement within a reasonable period of time after submission of the disagreement for resolution, said disagreement shall be adjudicated in a court of competent jurisdiction in the State of Illinois. To the extent that there is no applicable U.S. Federal law, this Agreement and performance thereunder shall be governed by the law of the State of Illinois.

(See page 12 for signature blocks)

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT.

FOR THE UNIVERSITY OF CHICAGO

(As Operator of ARGONNE NATIONAL LABORATORY):

Name _____

Title _____

Date _____

FOR SPONSOR

Name _____

Title _____

Date _____